

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADESA, INC.,
Plaintiff,

v.

EDWIN BERKOWITZ, et al.,
Defendants.

Case No. 14-cv-04022-VC

**ORDER GRANTING MOTIONS TO
DISMISS WITH LEAVE TO AMEND**

Re: Docket Nos. 13, 14

ADESA filed this suit against two former employees, Edwin Berkowitz and Blake Kennedy, seeking an order enjoining them from possessing, using, or disclosing any of ADESA's confidential information, and requiring them to account for and return any property to ADESA. The parties' employment agreement requires arbitration of all disputes, but includes an exception permitting the parties to seek injunctive relief from a court in accordance with Section 1218.8(b) of the California Code of Civil Procedure. In turn, Section 1218.8(b) allows a party subject to arbitration to apply for "provisional relief" from a court, "but only upon the ground that the award to which the applicant may be entitled [through arbitration] may be rendered ineffectual without provisional relief." Here, ADESA does not seek provisional relief to preserve the status quo pending arbitration; it seeks the same result it would be seeking if this dispute went to arbitration. In other words, ADESA's prayer for relief does not seek a temporary restraining order or preliminary injunction to prevent Berkowitz and Kennedy from using or disclosing certain information while an arbitrator adjudicates their right to use or disclose that information; it seeks an order from this Court that would finally decide the dispute. In light of the arbitration provision, the Court does not have jurisdiction to issue such an order, and therefore the complaint is dismissed.

Dismissal is with leave to amend to the extent ADESA can in good faith file an amended complaint that: (i) states a claim for breach of contract (or misappropriation of trade secrets, or some other applicable theory); and (ii) seeks provisional relief designed to preserve the status quo pending arbitration. The Court notes, however, that even if ADESA files such an amended complaint, its effort to obtain provisional relief from this Court will face significant hurdles. ADESA has yet to initiate arbitration proceedings despite the amount of time that has passed since this dispute arose. Nor has ADESA moved for provisional relief in this Court despite having filed this lawsuit ten weeks ago. Accordingly, there are serious questions about whether ADESA actually needs provisional relief and about whether ADESA is using this federal lawsuit as little more than a glorified demand letter to resolve its dispute with its former employees short of arbitration.

IT IS SO ORDERED.

Dated: November 20, 2014



VINCE CHHABRIA
United States District Judge